



State of Rhode Island and Providence Plantations
RHODE ISLAND BOARD OF EDUCATION
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Enclosure 6c1
May 14, 2019

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May 14, 2019

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TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation on the matter of
P. Doe v. Chariho Regional School District

The Appeals Committee of the Council on Elementary and Secondary Education met on April 23, 2019, to hear oral argument on the appeal of the following Commissioner decision:

P. Doe v. Chariho Regional School District

RECOMMENDATION: THAT, in the matter of P. Doe v. Chariho Regional School District, the Commissioner's decision is affirmed, as presented.

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STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

P. DOE

vs.

**CHARIHO REGIONAL
SCHOOL DISTRICT**

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DECISION

This is an appeal by The Chariho Regional School District (“Chariho”) from the decision of the Commissioner of Education (“Commissioner”) dated September 13, 2018 ordering Chariho to provide transportation for a student residing in Richmond while enrolled in a Rhode Island Department of Education (“RIDE”) approved career-preparation program at North Kingstown High School.

Student Doe (“Doe”) resides in Charlestown. On June 20, 2017, Doe’s parents wrote to the Chariho superintendent to inform Chariho that Doe had been admitted to the North Kingstown High School College and Career Academy for Business and Finance (the “NK Academy”), a RIDE approved career preparation program. On July 5, 2017, the Chariho superintendent responded and denied Doe’s permission to attend the NK Academy listing five (5) reasons for the denial, including the high cost of transportation. Doe didn’t appeal the decision to the School Committee, instead enrolling in the NK Academy. Doe’s enrollment then became the subject of an appeal to the Commissioner. The appeal was continued so Doe could consider transportation options to attend the NK Academy. On September 5, 2018, Doe

requested an interim order for reimbursement of transportation expenses for the 2017-18 school year, and for Chariho to provide transportation for the 2018-19 school year.

In a decision dated September 13, 2018, the Commissioner denied Doe's request for transportation reimbursement for the 2017-18 school year since Doe failed to raise the issue during the initial appeal. Citing recent administrative precedent and the Regulations Governing Career and Technical Education (the "Regulations"), the Commissioner determined that Chariho was responsible for providing transportation for Doe to attend the NK Academy, regardless of the cost. Chariho filed a timely appeal of the decision ordering the district to provide Doe with transportation to the NK Academy. Doe did not appeal the denial of transportation expense reimbursement for the 2017-18 school year.

On appeal, Chariho contends that there is no sufficient legal basis for the Regulations, that the application of the Regulation contradicts the residency requirements under R.I.G.L. § 16-64-1, and that the Regulations were misapplied by the Commissioner. In response, Doe defends the enrollment but advises that Doe has since unenrolled in the transportation service.

The Council has reviewed the records, the briefs filed by the parties, and considered the arguments presented at oral argument. In addition to the numerous statutes cited in the Commissioner's decision, the Rhode Island Superior Court recently noted that access to career preparation programs is guaranteed by state statute, and that the statute authorizes the Council to pass rules and regulations to control, operate, and manage the schools. East Providence School Department v. RIDE, 2018 WL 1895725 at 3-4 (R.I.Super. 2018) (" . . . *became a state approved career and technical program in May 2011, in accordance with § 16-45-1.1(d)(1)(i), which grants all students access to vocational education. . .* "), ("[t]he Rhode Island General Assembly granted the Board of Regents the authority 'to establish and maintain regional schools for

*vocational and technological training and instruction’ and to ‘make all rules and regulations necessary for the control, management, and operation of the schools.’”). Even in instances where statutes may conflict, rules of statutory construction advise us to read them *in pari materia*, in a way that will harmonize and give them both meaning. See Horn v. Southern Union Co., 927 A.2d 292, 295 (R.I., 2007). The residency statute explicitly states that it should be applied, “[e]xcept as provided by law or by agreement . . .” Therefore, as noted by the Commissioner, both the guarantee of access to a vocational education pursuant to §16-45-1.1(d)(1)(i) and the Regulations can be read in harmony with the residency requirements of §16-64-1, which allows exceptions as authorized by law and agreement. As noted by the Commissioner, the Regulations are validly authorized and given the force and effect by law, and can be read in harmony with the residency requirements of §16-64-1.*

Next, Chariho claims error in the application of the Regulations in this case. The pertinent section of the Regulation states that “[a]ll student shall have the right to request, from their resident LEA, access to a RIDE-approved career preparation program of their choice. This right of access shall be limited only by the following three conditions . . . “ 200 RICR-20-10-3.5.1(A). One such limitation requires students requesting access outside of their transportation zone to bear the costs of transportation. 200-RICR-20-10-3.5.1(A)(2). Therefore, transportation in the same zone is the responsibility of the Local Education Agency.

Chariho argues that the word program is operative in this matter, and that since Chariho offers a finance program they are relieved of any expense once Doe chooses to go elsewhere. Further, Chariho suggests that the cost, in this case in excess of \$60,000, must be considered prior to ordering Chariho to provide transportation. However, as noted by the Commissioner, the Regulation allows students access to the “program of their choice.” The selection of a program of

choice can only be limited by three (3) exceptions. None of those conditions have arisen in this matter. We find that the Commissioner correctly applied the plain meaning of the Regulation as written.

The Commissioner's decision in this case found that there is legislative authorization for the Regulations, that they do not conflict with the residency requirements of §16-64-1, and that Doe has not met the conditions of the Regulation relieving Chariho of transportation responsibility. We find no error. No part of the Commissioner's decision is "patently arbitrary, discriminatory, or unfair", the standard of review in appeals to the Council. Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975).

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on April 23, 2019.

Council on Elementary and Secondary Education

Daniel P. McConaghy, Chair

_____, 2019

Amy Beretta, Appeals Committee Chair

_____, 2019